

**Add Section 15607 to the Government Code to shift the burden of proof from taxpayers to the agencies collecting taxes in any court or administrative tax proceeding or any evaluation of tax compliance, as specified under certain conditions.**

**Source: Honorable Bill Leonard**

**Existing Law**

Under existing law, as a general rule, in civil cases involving the potential loss of money or property, the burden of proof is on the party in control of the facts. California law generally provides that taxpayers, like plaintiffs in other civil actions, have the burden of proving that the government's action was incorrect and establishing the merits of their claims by a preponderance of the evidence. The burden of proof is placed on the taxpayer since that is the party who has control of the records and documents.

*Under Federal law*, the Internal Revenue Service Restructuring and Reform Act of 1998, as added by Public Law 105-206, added Section 7491 to the Internal Revenue Code to place the burden of proof on the Internal Revenue Service (IRS) in any *court proceeding* involving a factual issue if the taxpayer introduced credible evidence with respect to the factual issue relevant to ascertaining the taxpayer's tax liability. Under this provision, the burden of proof shifts to the IRS if the taxpayer:

- (1) Complies with all the substantiation requirements of the Code,
- (2) Maintains all the records required by the Code,
- (3) Cooperates with the IRS' reasonable requests for witnesses, information, documents, meetings, and interviews, and
- (4) Meets the net worth requirements (the burden of proof shift does *not* apply to partnerships, corporations, or trusts whose net worth is more than \$7 million; no net worth limitation is applicable to individuals).

**This Proposal**

This proposal would add Section 15607 to the Government Code to provide that a state agency that collects and administers taxes (including the Board, the Franchise Tax Board, and the Employment Development Department) shall have the burden of proof in any court or administrative tax proceeding, or any evaluation of tax compliance conducted by employers, contractors, or agents of, with respect to a factual issue related to ascertaining the tax liability of a "cooperating taxpayer." The proposal would define "cooperating taxpayer," as one who has both complied with all statutory, regulatory, or case law substantiation requirements to substantiate any item on any tax return filed with the state agency, and has maintained all records required by law or regulation, and has provided those records to the state agency, upon a reasonable request.

This proposal is intended to incorporate into the California tax laws the same protections that federal law provides to taxpayers. Taxpayers should be presumed innocent until proven guilty and that standard should apply to dealings with the tax agencies. Also, a better balance would be achieved if the burden of proof is placed on the government to show an increase in liability if the taxpayer complied with the procedural and recordkeeping requirements of the tax laws. That is, if the taxpayer is generally law-abiding, it should be the government's responsibility to show that the taxpayer's determination of liability was not correct.

Several bills on this issue were considered in the past when the "Internal Revenue Service Restructuring and Reform Act" was pending before Congress. Since enactment of that Act, two additional bills have been introduced on this issue as well. The following lists the previous measures:

Year	Legislation	Proposal	Final Status
2007	AB 1600, La Malfa	Similar to this proposal	Never heard in committee
2005	SB 633, Dutton	Similar to this proposal	Never heard in committee
1998	AB 1488, Pringle	As amended 1/16/98, among other things, would have shifted the burden of proof from the taxpayer to FTB when ascertaining income tax liability in any court proceeding.	Held in Assembly Appropriations Committee
1998	AB 1631, Sweeney, et al.	As amended 4/15/98, declared legislative intent to shift burden of proof to conform with federal law	Held in Assembly Appropriations Committee
1998	AB 1633, Ortiz, et al.	As amended 4/14/98, stated legislative intent to conform state law to federal law relative to the shifting of the burden of proof in connection with taxes paid by California income tax taxpayers	Held in Assembly Appropriations Committee
1998	SB 1166, Hurt	As amended 1/5/98, would have provided that the FTB shall have the burden of proof in any court proceeding	Failed passage in the Senate Revenue and Taxation Committee
1998	SB 1425, Hurt & Kopp	As amended 4/14/98, would have made findings and declarations that California should conform to the IRS Restructuring and Reform Act, which may include provisions that would shift the burden of proof in court proceedings from the taxpayer to the taxing agency	Failed passage in the Assembly Revenue and Taxation Committee
1998	SB 1478, Rainey, et al.	As amended 3/19/98, provided that the Board, FTB, and EDD, and any state agency that collects taxes shall have the burden of proof in any court or administrative tax proceeding with respect to any factual issue relevant to ascertaining the tax liability of a taxpayer, but only if certain requirements are met.	Died in the Senate Revenue and Taxation Committee

*Part 10.1 (commencing with Section 15706) is added to Division 3 of Title 2 of the Government Code, to read:*

PART 10.1. BURDEN OF PROOF

15706. (a) A state agency that collects and administers taxes shall have the burden of proof in any court or administrative tax proceeding or any evaluation of tax compliance conducted by employers, contractors, or agents of the state agency, with respect to a factual issue related to ascertaining the tax liability of a cooperating taxpayer.

(b) For purposes of this section, "cooperating taxpayer" means a taxpayer who satisfies both of the following requirements:

(1) Has complied with all relevant statutory, regulatory, or case law substantiation requirements to substantiate any item on any tax return filed with a state agency.

(2) Has maintained all records as required by the Revenue and Taxation Code, or any rules or regulations issued by a state agency, and, upon a reasonable request by the state agency, has provided those records to the state agency.

(c) "State agency" means the Franchise Tax Board, the State Board of Equalization, or the Employment Development Department.

(d) "Tax liability" means any tax assessed by a state agency, including any interest charge or penalties levied in association with the tax.

(e) "Administrative proceeding" means any of the following:

(1) For disputes concerning taxes collected by the State Board of Equalization, the hearing before the members of the State Board of Equalization.

(2) For disputes concerning taxes collected by the Franchise Tax Board, the hearing before the members of the State Board of Equalization.

(3) For disputes concerning taxes collected by the Employment Development Department, the hearing before the Unemployment Insurance Appeals Board.

(f) Unless provided otherwise, the burden of proof upon state agencies for purposes of this part shall be a preponderance of the evidence.

(g) This section does not apply to an adjustment proposed and made to a taxpayer's federal income tax return by the federal government.

(h) Nothing in this section shall subject a taxpayer to unreasonable search or access to records in violation of the United States Constitution, the California Constitution, or any other law.

(i) This section shall apply only to court and administrative proceedings involving determinations issued on or after the date on which this act becomes operative.